

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2009-035970

05/30/2012

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT  
L. Nixon  
Deputy

PAUL B MOHR JR., et al.

WILLIAM R HOBSON

v.

MURPHY ELEMENTARY SCHOOL DISTRICT 21 OF MARICOPA COUNTY, et al. GORDON LEWIS

GARY L LASSEN  
KEVIN KOELBEL

**RULING**

The Court has had under advisement Plaintiffs' ("Mohr") Motion to Vacate under Rule 59(a) [Open Meeting Law Claims].<sup>1</sup> Having read and considered the briefing and having heard oral argument, the Court issues the following ruling.

Mohr argues that violations of the Open Meeting Law ("OML") occurred on October 8, 2009 and October 28, 2009.<sup>2</sup> He requests this Court to void all actions of the Board subsequent to October 8 and 28, 2009. The District argues this constitutes an impermissible collateral attack on Judge Donahoe's February 3, 2011 judgment. The Court agrees.

A collateral attack on a judgment "is an effort to obtain another and independent judgment which will destroy the effect of the former judgment." *Duncan v. Progressive Preferred Ins. Co.*, 228 Ariz. 3 (App. 2011) (internal quotation omitted);<sup>3</sup> *see also Cox v. Mackenzie*, 70 Ariz. 308, 312 (1950). Unless the judgment is void because the court lacked

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<sup>1</sup> See Ariz. R. Civ. P. 59(a)(8); Minute Entry Feb. 8, 2012 at 3.

<sup>2</sup> Plaintiffs assert these violations are exclusive of their claim that Lewis & Roca was improperly hired. See Minute Entry Jan. 28, 2011 at 3; Minute Entry Feb. 8, 2012 at 3 n.3.

<sup>3</sup> The District cites to 227 Ariz. 398 (App. 2011). Westlaw indicates that Opinion was withdrawn from the bound volume because it was amended by 228 Ariz. 3 (App. 2011).

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jurisdiction over the subject matter or parties, or to render the judgment, it cannot be collaterally attacked “even if it is erroneous or wrong, so that it could be reversed on appeal or set aside on direct attack.” *Id.* (internal quotation omitted).

Mohr contends the proceeding in front of Judge Donahoe was a record appeal with all issues regarding the OML deferred to this case. (Reply at 10.) This contention misses the point. Judge Donahoe affirmed the hearing officer’s decision as supported by substantial evidence and the Board’s decision to terminate Mohr as not arbitrary, capricious, or an abuse of discretion. (Cause No. LC2010-000273-001 DT, Minute Entry Dec. 7, 2010 at 3.) Mohr seeks a determination from this Court that his termination is illegal and void. It is clear that the relief Mohr seeks would have the effect of destroying the prior judgment.

Based on the foregoing,

**IT IS ORDERED** denying Mohr’s Motion to Vacate under Rule 59(a) [Open Meeting Law Claims].

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.